IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.6427 of 2005

Smt.Sushila Narayan Purohit — Petitioner
Vs.
Rama Subhana Patil & ors. — Respondents

Mr.R.B.Parab for petitioner.
Mr.V.B.Rajure for Resp.Nos.1 to 3 and 4A to 4E.

CORAM: B.H.MARLAPALLE,J.

June 14, 2006.

P.C.

. Heard Mr.Parab, the learned counsel for the petitioner and Mr.Rajure, the learned counsel for Respondent Nos.1 to 3 and 4A to 4E. This petition arises from the order dated 20/8/2005 passed by the learned Civil Judge, Senior Division at Kolhapur allowing the application at Exhibit 51 filed in Special Darkhast No.94 of 2003. The learned counsel further states that he has also challenged the order dated 24/6/2005 passed by the very same Court below application at Exhibit 27.

. By the application at Exhibit 27 the petitioner had contended that she has 5/9th share in the suit property and, therefore, she was entitled to take objection under Section 47 of CPC. The learned

Judge of the trial Court noted that Regular Civil Suit No.61 of 1969 was filed by the father of the respondents and Special Civil Suit No.4 of 1969 was re-registered as Regular Civil Suit No.76 of 1971. This later suit was decreed on 12/11/1971. Regular Civil Appeal No.37 of 1972 was dismissed on 29/6/1973 and final decree application no.76 of 1971 was filed. Second appeal challenging the dismissal order dated 29/6/1973 also failed and thereafter in final decree application no.11 of 1988 the present applicant had applied claiming her share. The same was negatived and, therefore, she filed Regular Civil Appeal No.215 of 2003 which was also dismissed. The trial Court noted that though the present petitioner was not a party in Regular Civil Suit No.61 of 1969, she had 1/9th share in the land mentioned in schedule of Final Decree Application No.76 of 1971 which included land in Gat No.850. At the same time brother of the opponent had 4/9th share in all the lands and he had sold his share in Gat No.850 to the predecessors of the applicant i.e. Rama. Therefore, the land in Gat No.850 would be adjusted towards the 4/9th share of Dattatraya and its possession could be given to the applicant. The present petitioner who was Opponent No.4 could easily get her share to the extent of

1/9th in other agricultural land mentioned in Final Decree Application No.76 of 1971. Under these circumstances, the petitioner could not prevent or obstruct the decree holders from obtaining final decree in respect of Gat No.850. This view taken by the learned Civil Judge, Senior Division at Kolhapur by the impugned order dated 24/6/2005 calls for no interference.

. So far as the order below Exhibit 51 is concerned, the petitioner has not suffered any direction against her and the directions are against JD Nos.1/1 and 2.

. Hence the petition fails and the same is hereby rejected summarily.

(B.H.MARLAPALLE,J.)